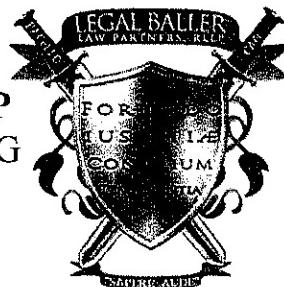


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Attorneys for Plaintiff, MATTHEW ANDERSON, Jr.

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

MATTHEW ANDERSON, Jr., and all  
those similarly situated.

**Plaintiff:**

V.

Kimball, Tirey & St. John, LLP,

Christine Relph, Esq., and

## DOES 1 through 100 Inclusive

## Defendants.

CASE NO. 3:13-CV-253-JM(NLS)

**PLAINTIFF'S SECOND  
AMENDED COMPLAINT FOR  
CLASS ACTION *as and for the  
following:***

**(1) VIOLATION OF THE FAIR DEBT COLLECTION PRACTICES ACT.**

**(2) VIOLATION OF THE  
ROSENTHAL DEBT  
COLLECTION PRACTICES  
ACT.**

**(3) VIOLATION OF BUSINESS  
& PROFESSIONS CODE  
17200.**

**(4) MISREPRESENTATION &  
FRAUD for PUNITIVE  
DAMAGES:**

## A DEMAND FOR JURY TRIAL

TO THIS HONORABLE COURT AND ALL PARTIES INTERESTED HEREIN:

COMES NOW Plaintiff, MATTHEW ANDERSON, Jr., by and through

1 his attorneys of record, the LEGAL BALLER™ LAW PARTNERS, RLLP,  
 2 pursuant to his Honor's recent Order, hark back to the days of yore with a preface  
 3 to this Second Amended Complaint hoc modo:

5                   I.

6                   PROEMIUM

7                   In the aftermath of what was dubbed the "*Great Recession*", millions of  
 8 homeowners in our beloved country have faced the emotional turmoil associated  
 9 with what is now commonplace, the reality of FORECLOSURE and close  
 10 relative EVICTION. Our government bailed out the financial institutions that  
 11 underwrote the "*toxic loans*" that crippled the global economy and the Federal  
 12 Treasury stepped in to "*save it from collapsing*." Consequently to the cost of  
 13 Americans, the function of the law appears to have been creatively side-stepped  
 14 to achieve a solution to a massive money problem.

15                  Counsel humbly extends his proverbial olive branch to this Honorable Court  
 16 for "*jumping the gun*" as it were, in his Amended Complaint by capitalizing on  
 17 what appeared to have been a robo-signed document given the cursorily curious  
 18 misspelling of plaintiff's name. Upon review, regrouping, and investigative  
 19 diligence counsel believes this time we colloquially "*got it right*". To that extent,  
 20 we graciously and professionally thank this Honorable Court for giving us  
 21 another opportunity to articulate that which may be subliminally known, but what  
 22

has yet to be lucidly articulated via the medium of law. In this forum; designed for Americans to seek redress of their legal grievances, we endeavor to do so via this very Complaint.

Without further ado, MATTHEW ANDERSON, Jr., individually, and on behalf of all of those persons similarly situated is informed, believes and thereon alleges the following against defendants *seriatim*:

III

## **LEGAL FOUNDATION**

A. This is an action brought under the FAIR DEBT COLLECTION

PRACTICES ACT (FDCPA) 15 U.S.C. §§ 1692k et seq. and seeks,

statutory damages, actual damages, punitive damages and Attorney's fees.

Therefore, this Honorable Court has proper jurisdiction to hear Federal

Question matters.

<sup>8</sup> B. Justice Sonia Sotomayer of the United States Supreme Court delivered an

<sup>1</sup> See, e.g., the opinion in *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA, et al.*

<sup>1</sup> U.S. LEXIS 3480 (S. Ct. 2010) holding that “The bona fide error defense

in §1692k(c) does not apply to a violation resulting from a debt collector's

mistaken interpretation of the legal requirements of the FDCPA.”

C. Thereafter, in a seminal decision by the Ninth Circuit Court of Appeal via

In *Re Veal* (2011 9th Cir.), the Court reversed the District Court's grant of

relief from the stay to Wells Fargo (the foreclosing entity herein) because, inter alia, it could not show that it was the holder of the note in question such that it was entitled to enforce it; i.e., it had NO standing to sue because it could not qualify as the “real party in interest.”

D. The Sixth Circuit Court of Appeals in Wallace v. Washington Mutual, et al.

Case No. 10-3694, (6th Cir. 2012) extolled that incorrectly identifying the ‘actual holder of the note,’ i.e., alleged creditor, is materially misleading under the Fair Debt Collection Practices Act.

E. In the case at Bar and all others so similarly situated, the foregoing legal

authority and the facts herein below alleged provide the poignant predicate for this lawsuit.

III.

## LITIGATION PARTIES

1. Plaintiff MATTHEW ANDERSON, Jr. hereby is informed, believes and thereon alleges that on or about March 27, 2007 he encumbered the real property located at 4001 Shadow Rock Court, Bonita CA 91902-3039 through an "ADJUSTABLE RATE MORTGAGE NOTE-PICK-A-PAYMENT LOAN" in the amount of \$450,000.00 from WORLD SAVINGS BANK, FSB, a Federal Savings Bank: Loan No. 0045697992. Attached hereto as EXHIBIT 1, is a true and correct copy of the same along with the confirmatory supplements entitled

1 “Verification of Personal and Loan Information”. This confirms the first monthly  
 2 payment of \$1,553.05 due on May 15, 2007, and the “Document Set Cover  
 3 Sheet” containing an internal DOCUMENT FILE NUMBER  
 4 **00456979920703227140806**-*the underlined portion of which supplements the*  
 5 *loan number hereinabove identified.*

6  
 7 2. Plaintiff MATTHEW ANDERSON, Jr. also is hereby informed, believes and  
 8 thereon alleges that the DEED OF TRUST securing the note herein above alleged  
 9 was recorded in the County of San Diego by OLD REPUBLIC TITLE  
 10 COMPANY, which references and confirms the loan amount of \$450,000.00 and  
 11 corresponding loan number 0045697992 as referenced in ***EXHIBIT 1*** thereby  
 12 creating a “Security Instrument” in said real property by MATTHEW  
 13 ANDERSON, Jr. inuring to the benefit of WORLD SAVINGS BANK, FSB, et  
 14 al. Attached hereto as **EXHIBIT 2**, is a true and correct copy of said DEED OF  
 15 TRUST bearing the sequential date-stamped numbers 33369 through and  
 16 including 33386.

17  
 18 3. Moreover, Plaintiff MATTHEW ANDERSON, Jr. is a unique individual  
 19 residing in San Diego, California with a family footprint on this country that is  
 20 worthy of expatriation for the Court. ***To wit:*** A graduate of the University of  
 21 Illinois in Political Science, MATTHEW ANDERSON, Jr., is also an alumnus of  
 22 San Diego State University where he was a student activist, football player, track  
 23  
 24  
 25  
 26  
 27

1 athlete and a member of Alpha Phi Omega, a national service fraternity. Mr.  
2 ANDERSON's academic study was interrupted in 1969 when he was selected to  
3 be 3M Company's first African-American Sales engineer in the new Computer  
4 Products Division. His first territory was that area today known as "Silicon  
5 Valley" and Mr. ANDERSON lived in Santa Clara, California while doubling his  
6 sales territory in a single year. At the suggestion of a Trial Judge in San Diego,  
7 Mr. ANDERSON would travel to Berkeley, California where he would  
8 informally study law. After graduation from University, MATTHEW would be  
9 offered a scholarship to the University of New Mexico in the graduate writing  
10 program there. He instead chose to pursue his doctoral degree at Northwestern  
11 University in Evanston, Illinois. MATTHEW would later transfer from the  
12 thirteenth most renowned Political Science Department to doctoral work at the  
13 Massachusetts Institute of Technology (MIT) then acknowledged as the number  
14 one department of its kind in the world. His doctoral work is all but dissertation  
15 as he chose to interrupt study to work with Dr. Daniel Lerner, the East-West  
16 Communications Center in Hawaii and UNESCO and the US Department of  
17 Transportation on several projects. The UNESCO project was the first of its kind  
18 to chronicle satellite information for libraries and their founding worldwide.

25 4. While at MIT, he also worked with Shari Al Balthasar on efforts to combine  
26 the "hard" science elements of Mechanical Engineering with Political Dynamics.  
27

At that time, Shari was also a political consultant to his uncle, the Shaw of Iran. MATTHEW's work consulting Abigail Rockefeller relative to a fledgling project concerning Swedish "Multrums" (*waterless toilets*) and their potential placement in developing nations was aided by his Communications and African Politics backgrounds. Mr. ANDERSON also served as Vice President of the MIT Club in San Diego recruiting students for matriculation at that institution.

5. More recently, Mr. ANDERSON has served as consultant to Christopher Reeves concerning his acknowledgment by the University of California for his stem cell research. He also doubled as bodyguard for Christopher's wife, Dana and son William during their stays in San Diego. Mr. ANDERSON has taught all grades, K-12 plus college courses at MIT, Northwestern University and San Diego State University. He has also taught at the University of California, San Diego where he also broadcast a radio program there for several years. He has also volunteered time on that campus to teach children's martial arts for fifteen years and aerobics for eight years.

6. MATTHEW's pedigree is also strong. His mother Katye, valedictorian of the largest Black High School in the world at that time, brought First Lady, Eleanor Roosevelt to that campus where both were serenaded by first tenor Matthew Anderson Sr., Katye's husband "to be". Mrs. Anderson would go on to become the only woman to have received acknowledgment from the United Nations,

1 France, Germany and the Netherlands for her work with children worldwide. She  
2 was also an original member of Lyndon Johnson's National Teacher's Corps. Her  
3 Husband, Matthew Anderson Sr. would become one of the members of the team  
4 that saw Chuck Yeager break the "sound barrier" in 1947. Matthew Anderson  
5 Sr., would later, in 1951, become the only African-American on the eleven  
6 person team to introduce the first working electronic computing device (the  
7 computer) to the world in Minneapolis/St. Paul. Both of MATTHEW's parents  
8 have been nominated to President Obama's Administration for the President's  
9 Medal of Freedom Award.

10 7. MATTHEW ANDERSON, Jr. is a musician and a writer whose most recent  
11 credits include several contributions to the Huffington Post, Yahoo, and several  
12 books being prepared for publication. His "Anatomy of a Foreclosure" series is a  
13 novel "cross publication" between Yahoo and Huffington post that investigates  
14 the nuts-and-bolts of foreclosure and how it currently impacts individuals. He has  
15 interviewed several notables on air and bemoans having missed an interview with  
16 Hillary Clinton by an hour that was lost from her schedule. Also, a former  
17 conversation he had with President John F. Kennedy will be highlighted in a  
18 coming publication.

19 8. MATTHEW ANDERSON, Jr. was in the process of creating a unique  
20 situation whereby he would provide quarters for children through an attempt to  
21

1 create an international children's library. His Bonita residence, to be used for that  
2 purpose, was also scheduled to be used to help house the parents and children of  
3 11 Q sufferers. Lori Sturtz (*MATTHEW's deceased partner*), along with Dr. Paul  
4 Grosfeld of the University of California, San Diego, had created the 11 Q  
5 Conference on the heels of Dr. Kenneth Chen's creation of the new Department  
6 of Molecular Medicine on campus in 2001. After meetings with officials of  
7 INSERM in Paris, it was determined that there might be a place for the  
8 acknowledgment of this bevy of children, roughly 200 in all, that contracted not  
9 one or two, but eight diseases as part of the newly discovered 11 Q compendium  
10 of diseases. These notables had all worked together to bring light to these issues  
11 and Mr. ANDERSON had created a context where his home would have  
12 eventually become a respite for one or two families a week while being  
13 diagnosed each year in San Diego. These hopes have all but been devastated  
14 when Wells Fargo foreclosed on his family's home, and as a result,  
15 MATTHEW's belongings (to include much of his family's historical documents)  
16 were sold at auction after Wells Fargo Bank had moved those belongings from  
17 his home.

24 9. Plaintiff MATTHEW ANDERSON, Jr. thoroughly is informs, believes and  
25 thereon alleges that he has legal standing to contest that which has occurred  
26 because he was the holder/obligor under.  
27

1       10. To add insult to injury, status post foreclosure, the law-firm [defendant(s)  
2 herein] were retained by an investor who purchased the Anderson's family home  
3 and "evicted" MATTHEW forthwith; secondary to the less than lawful debt  
4 collection practices herein alleged against all parties-presently known and  
5 unknown.  
6

7       11. Consequently, and most tragically, Mr. ANDERSON has been forced to live  
8 in his vehicle; a devastating reality that he must endure every single day of his  
9 life all in the face of his accomplishments and familial contributions to our great  
10 nation.  
11

12       12. MATTHEW ANDERSON, Jr. still serves as an officer with the San Diego  
13 Foreclosure Strategist Group in San Diego and seeks "Class Certification" as the  
14 lead member of all those persons similarly situated; based on the enumerable  
15 predicate legal factors justifying the same.  
16

17       13. Defendants Kimball, Tirey & St. John, LLP is a law firm, with a principal  
18 place of business in San Diego, California, that holds themselves out as providing  
19 "35 years of superior legal representation." To iterate from their website:  
20 [www.kts-law.com](http://www.kts-law.com):  
21

22                  *"We are a statewide, full-service law firm that has been representing owners  
23 and managers of residential and commercial properties for over 35 years  
24 in California. Kimball, Tirey & St. John LLP represents many of the top  
25  
26  
27*

1           *property management companies in the state and country, as well as*  
2           *assisting smaller portfolio owners with their legal needs. In addition to*  
3           *providing exemplary eviction and collection services, our firm offers a*  
4           *broad spectrum of services to the real estate community.”*

5  
6           **[Emphasis Added].**  
7

8           Attached as **EXHIBIT 3**, is a true and correct copy of said defendants' webpage  
9           print-outs for the Court's reference, as substantive evidence of allegations  
10          heretofore to follow.

11  
12          14. CHRISTINE RELPH, Esq. is an associate attorney with the law firm of  
13          Kimball, Tirey & St. John, LLP, in San Diego, California. CHRISTINE  
14          RELPH, Esq. has an undergraduate degree from the University of Arizona and  
15          Juris Doctorate from the venerable institution here (in San Diego) known as the  
16          University of San Diego Law School. She holds herself as having, *inter alia*,  
17          expertise in the area of practice known as “Post Foreclosure Evictions” and is a  
18          represented member of the “California Mortgage Banker Association.” Attached  
19          as **EXHIBIT 4**, is a true and correct copy of Attorney RELPH's State Bar  
20          Profile. Mdm. RELPH's profile is at [www.kts-law.com/attorneys/index.aspx](http://www.kts-law.com/attorneys/index.aspx).

21  
22           IV.  
23

24  
25           **JURISDICTION AND VENUE**  
26

27          15. This Court has jurisdiction under the Federal Fair Debt Collection Practices  
28

1 Act ("FDCPA"), 15 U.S.C. § 1692k. This Honorable Court is also the proper  
2 forum under the doctrine of Supplemental Jurisdiction—See 28 U.S.C. § 1367.  
3 Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391 (c).  
4 Plaintiffs' action for declaratory relief is authorized by 28 U.S.C. §§ 2201 and  
5 2202.

6  
7 V.  
8

9 **REQUEST FOR CLASS CERTIFICATION**  
10

11 16. This Class Action is being filed by Plaintiff MATTHEW ANDERSON, Jr.,  
12 pursuant to Federal Rule of Civil Procedure 23 on behalf of himself and others  
13 similarly situated as against the defendant law-firm, its associate attorneys  
14 including, specifically, defendant CHRISTINE RELPH, Esq. SBN213984 within  
15 the meaning of the Fair Debt Collection Practices Act ("FDCPA"), and the  
16 Rosenthal Act.  
17

18 17. The Law-Firm Defendants are debt collectors within the meaning of the  
19 FDCPA and Rosenthal Act.  
20

21 18. Plaintiff brings this action on behalf of himself and all other persons  
22 similarly situated, as members of a proposed Plaintiff Class. The class that  
23 Plaintiff seeks to represent is defined as:  
24

25 *All persons that have been named defendants in unlawful detainer actions by*  
26 *Defendants, where the plaintiff was a purported "person entitled to enforce the*  
27

1       *note" as set forth in the seminal case of In Re Veal, when in fact no*  
2       *investigation was conducted into the same to confirm with reasonable legal*  
3       *certainty that said plaintiff had proper standing to foreclosure and thereby*  
4       *evict in the state of California.*

5       19. Defendants, as plaintiff's agent, representative and/or attorney is under  
6       "imputed knowledge" of the non-traceability of the legal holder of the note(s)  
7       used to foreclosure and thereby knew or should have known that each and every  
8       purported plaintiff had no legal standing to foreclosure thereby depriving  
9       defendants, with the legal right to evict and take possession of the properties  
10      because, inter alia, said plaintiff could not show standing.

11      14. 20. This action has been brought and may properly be maintained as a class  
12      action under Rule 23 of the Federal Rules of Civil procedure.

13      17. 21. This Court may maintain these claims as a class action pursuant to Fed. R.  
14      18. Civ. P. 23(b) (1), 23(b) (2), 23(b) (3), and/or 23(c) (4)(A).  
15

16      20. 22. Existence of an Identifiable Class - The proposed Class definition is  
17      21. sufficiently definite so that it is administratively feasible for the Court to  
18      22. determine whether a particular individual is a member. Members of the Class  
19      23. may be identified from records maintained by Defendants, various court records  
20      24. and by reviewing the named plaintiffs and defendants in all actions filed by the  
21      25. Defendants.  
22

1       23. Numerosity of the Class - Fed. R. Civ. P. 23(a) (1): The members of all  
 2       Classes are so numerous that joinder of all members is impracticable. The precise  
 3       number of Class members and their addresses are unknown to Plaintiff, but can  
 4       be obtained from Defendants and from various court records. Class members can  
 5       be notified of the pendency of this action based on those records, or by any  
 6       means used by the defendants to notify them of the underlying unlawful detainer  
 7       suits. The disposition of the claims of the Class members in a single action will  
 8       provide substantial benefits to all parties and the Court.

12       24. Existence of Common Questions of Fact and Law- Fed. R. Civ. P. 23(a)(2):  
 13       Plaintiff, as a Class Representative, alleges that the questions of law and fact  
 14       relating to his claims are common to the claims of the Class and the claims  
 15       predominate over any questions affecting solely individual members, in  
 16       satisfaction of rule 23(a)(2). These common legal and factual questions include  
 17       whether defendant debt collectors; by collecting the loans; foreclosing and filing  
 18       Unlawful Detainer actions; evicting plaintiff/Class without having an assignment  
 19       and/or possession of the promissory note without a proper assignment of the trust  
 20       deed mortgage; using improper documents created by them to foreclose, and  
 21       when they knew or should have known of the fraudulent scheme involved in  
 22       securitizations are in violation of the following:

- 26             27       - The Federal Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C.  
 28

1           § 1692et. seq. by engaging in unfair and unlawful debt collection  
2 practices.  
3

4           - The California Civil Code § 1788 - California Rosenthal Fair Debt  
5 Collection Practices Act; and/or California Civil Code § 2924h; and/or  
6

7           - The California Business and professions Code § 17200.

8           - Whether Plaintiff and Class members have been injured by defendant's  
9 conduct;

10          - Whether Plaintiffs and Class members are entitled to compensatory  
11 damages, and the amount of such damages; and  
12

13          - Whether Plaintiff and Class members are entitled to statutory damages  
14 and the amount of such damages.

15          - Whether Plaintiff and Class members are entitled to legal costs and  
16 fees.

17          25. Fed. R. Civ. P. 23(a) (3): Plaintiff's claims are typical of the claims of the  
18 Class because defendants initiated (a) suit against him without having an  
19 assignment of the note and mortgage, creating fraudulent documents to foreclose,  
20 and when they knew, or should have known, about the fraudulent recorded  
21 documents and scheme of securitization. Furthermore, all members of the Class  
22 are similarly affected by defendants' wrongful conduct.

23          26. Adequacy, Fed. R. Civ. P. 23(a) (3) (4): Plaintiff is an adequate  
24

1 representative of the Class because Plaintiffs' interests overlap and are not in  
2 conflict with the interests of the Class. Plaintiff has retained counsel competent in  
3 complex litigation, and Plaintiff intends to prosecute this action vigorously. The  
4 interests of the Class will be fairly and adequately protected by Plaintiff and his  
5 counsel.

6  
7 27. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(1). Class  
8 certification is appropriate pursuant to Rule 23(b)(1) because the prosecution of  
9 separate actions by individual members of the classes would create a risk of  
10 inconsistent or varying adjudications that would establish incompatible standards  
11 of conduct for Defendants and/or because adjudications respecting individual  
12 members of the classes would be a practical matter, be disparities of the interests  
13 of the other members or would risk substantially impairing or impeding their  
14 ability to prosecute their interests.

15  
16 28. The class may be certified pursuant to Fed. R. Civ. P. 23(b)(2). Class  
17 certification is appropriate pursuant to Rule 23(b)(2) because Defendants have  
18 acted or refused to act on grounds generally applicable to all members of the  
19 class, thereby making final injunctive relief or declaratory relief as a whole  
20 appropriate. Plaintiffs and members of the Class have suffered, and will continue  
21 to suffer, harm and damages as a result of Defendants' unlawful and wrongful  
22 conduct.

1       29. The Class may be certified pursuant to Fed. R. Civ. P. 23(b)(3). A Class  
2                  Action is superior to other available methods for the fair and efficient  
3                  adjudication of the controversy under Rule 23(b) (3). Absent a Class Action,  
4                  most members of the Class likely would find the cost of litigating their claims to  
5                  be prohibitive, and will have no effective remedy at law. The Class treatment of  
6                  common questions of law and fact is also superior to multiple individual actions  
7                  or piecemeal litigation in that it conserves the resources of the courts and the  
8                  litigants and promotes consistency and efficiency of adjudication.  
9  
10

VI.

**13 ALLEGATIONS OF FACT APPLICABLE TO ALL CAUSES OF ACTION**

14 30. Plaintiff MATTHEW ANDERSON, Jr. is further informed, believes and  
15 thereon alleges that at some point status post the securing of said "note," the  
16 lender known as WORLD SAVINGS BANK, FSB was either taken over or  
17 subsumed in some manner (the details of which are unknown to the plaintiff at  
18 this time) by an entity known as WACHOVIA BANK, FSB, a branch, subsidiary  
19 or other corporate arm entitled **WACHOVIA Mortgage**. Plaintiff understands  
20 and believes and thereon alleges that the "note" referenced as **EXHIBIT 1 & 2**  
21 herein was assigned to WACHOVIA as part of said transaction thereby making it  
22  
23  
24  
25 a part of their mortgage portfolio of assets--*toxic or otherwise*.

31. Plaintiff MATTHEW ANDERSON, Jr., is additionally informed and

1 believes and thereon alleges that WACHOVIA BANK, FSB via its internal  
 2 mechanisms of maximizing portfolio assets bundled its mortgage asset loans  
 3 and/or notes into what is commonly known as "Mortgage Backed Securities"  
 4 (hereafter MBS), including the original WORLD SAVINGS BANK Loan No.  
 5 0045697992 and sold it on the open negotiable paper markets parlayed on our  
 6 own WALL STREET to investors globally. The exact dates of the bundling and  
 7 actual sale are unknown *at this time*. Pleadings based on sound information and  
 8 good faith, believes its veracity.  
 9

10 32. Plaintiff MATTHEW ANDERSON, Jr. informed, believes and thereon  
 11 alleges that during our nation's financial crisis, specifically in the second quarter  
 12 of 2008, WACHOVIA reported an anticipated whopping loss of \$8.9 billion  
 13 dollars. Attached please see **EXHIBIT 5**, a true and correct copy of Wikipedia's  
 14 WACHOVIA printouts detailing the company's beginning, mergers, financial  
 15 triumphs and devastation, i.e., crash of Washington Mutual and withdrawal of  
 16 customer deposits, etc.  
 17

18 33. Plaintiff MATTHEW ANDERSON, Jr. also informed, believes and thereon  
 19 alleges that consequently, WACHOVIA hired Treasury Undersecretary Bob Steel  
 20 as its Chief Executive in hopes that he would "save the day" and resurrect the  
 21 bank from insolvency and ease the drain on the U.S. Treasuries F.D.I.C.'s  
 22 insurance program. See **EXHIBIT 5**.  
 23

1       34. Plaintiff MATTHEW ANDERSON, Jr. further is informed, believes and  
 2 thereon alleges that as the credit crisis continued to shock the nation and the  
 3 global economy at large, it became apparent that WACHOVIA was colloquially  
 4 “*going down*” and imploded the financial market(s). Citigroup, Inc. entered into  
 5 an exclusivity deal with WACHOVIA for a takeover of all its assets: profitable  
 6 and toxic on or about September 29, 2008. Attached hereto as **EXHIBIT 6** is a  
 7 true and correct copy of the September 29, 2008 exclusivity agreement between  
 8 WACHOVIA and CITIGROUP, INC. regarding the latter’s acquisition of the  
 9 former.

10      35. Plaintiff MATTHEW ANDERSON, Jr. is additionally informed, believes  
 11 and thereon alleges that while in negotiations, WELLS FARGO “swooped in”  
 12 and made all stock offer to WACHOVIA for 15.1 billion dollars. See **EXHIBIT**  
 13 **7**, under “Acquisition by Wells Fargo.” And, as the midnight oil would  
 14 proverbially burn, both companies “unanimously” approved the merger on  
 15 *October 3, 2008*, regardless of CITIGROUP’S EXCLUSIVITY DEAL.

16      36. Attached hereto as **EXHIBIT 8**, is a true and correct copies of the NEW  
 17 YORK TIMES’ ARTICLES from their “BUSINESS SECTION” stating its  
 18 tremendous \$23.9 billion dollar loss for the third quarter and which expands on  
 19 the breach of the CITIGROUP’s contract.

20      37. Plaintiff MATTHEW ANDERSON, Jr. is informed, believes and thereon

1 alleges that curiously coincidental to the foregoing, a month prior the  
 2 INTERNAL REVENUE SERVICE issued a notice providing “tax breaks” to  
 3 companies that acquire troubled banks, which according to experienced tax  
 4 analysts would be worth “billions to WELLS FARGO,” which satirically “may  
 5 have been a factor in WELLS FARGO’s decision to purchase WACHOVIA. See  
 6

7 ***EXHIBIT 5.***

8 38. Plaintiff MATTHEW ANDERSON, Jr. is thoroughly informed and believes  
 9 and thereon alleges that the merger garnered the blessing of the FEDERAL  
 10 RESERVE SYSTEM via a publicly issued Order dated October 12, 2008 by  
 11 Deputy Secretary of the Board Robert deV. Frierson. Attached hereto as  
 12 **EXHIBIT 9,** is a true and correct copy of the FEDERAL RESERVE SYSTEM’s  
 13 ORDER APPROVING THE ACQUISITION OF A BANK HOLDING CO.

14 39. Plaintiff MATTHEW ANDERSON, Jr., is informed, believes and thereon  
 15 alleges that one might posit that by (a) said billion dollars in tax breaks, (b) the  
 16 blessing by the FEDERAL RESERVE SYSTEM and (c) WELLS FARGO’s  
 17 admission that its WACHOVIA unit was involved with *money laundering for*  
 18 *drug traffickers* via transfers in and out of “*casas de cambios*” without proper  
 19 diligence in violation of the Bank Secrecy Act helped the financial giant ease the  
 20 pain of the credit crisis with Warren Buffet as its significant shareholder. See  
 21

22 ***EXHIBIT 5.***

1       40. Plaintiff MATTHEW ANDERSON, Jr. is thoroughly informed, believes and  
 2 thereon alleges that in the wake of the midnight “all stock deal” takeover, the  
 3 traceability of the toxic loans/notes bundled, parlayed and sold as MBS are “non-  
 4 existent” and that *a fortiori*, leaves “genuine doubt” as to WELLS FARGO’s  
 5 standing as a “person entitled to enforce the note” used as the predicate for  
 6 plaintiff’s MATTHEW ANDERSON, Jr.’s foreclosure in the first instance. In  
 7 other words, MATTHEW ANDERSON, Jr. is duly informed and believes and  
 8 thereon alleges that WELLS FARGO could not have met the requisite legal  
 9 requirement to show that it was entitled to enforce the initial note via WORLD  
 10 SAVINGS LOAN NO. 0045697992; see ***EXHIBIT 1*** and incorporated by this  
 11 reference. Also, please see section: **LEGAL FOUNDATION (C) - In Re Veal**  
 12 (2011 9th Cir.), where our own 9th Circuit Court reversed the District Court’s  
 13 grant of relief from the stay to Wells Fargo (the foreclosing entity herein)  
 14 because, *inter alia*, could not show that it was the holder of the note in question,  
 15 nor was entitled to enforce it, i.e., it had NO standing to sue., because it could not  
 16 qualify as the “real party in interest.”

22     41. Plaintiff MATTHEW ANDERSON, Jr. additionally is informed, believes  
 23 and thereon alleges that said allegation is supported by the Wells Fargo and  
 24 Wachovia Merger. The completed Press Release dated January 1, 2009 - a true  
 25 and correct copy of which is attached hereto as **EXHIBIT 10**, of note, is the  
 26  
 27

1 resignation of WACHOVIA's stock symbol "WB" as of December 31, 2008.

2 42. Plaintiff MATTHEW ANDERSON, Jr. is also informed, believes and  
 3 thereon alleges that after the "merger" of WELLS FARGO and WACHOVIA,  
 4 and contradiction of the terms of the "merger" agreement, WACHOVIA  
 5 MORTGAGE, FSB committed the *ultra vires* act of substituting the original  
 6 trustee for loan/ note herein identified and incorporated by reference as  
 7 ***EXHIBIT 2*** to a company "labeled" as NDEX WEST, LLC. Attached hereto as  
 8 **EXHIBIT 11** is a true and correct copy of the "NOTICE OF DEFAULT AND  
 9 ELECTION TO SELL UNDER DEED OF TRUST" dated July 22, 2009, which  
 10 is greater than seven (7) months after WACHOVIA MORTGAGE, FSB was  
 11 bought out by WELLS FARGO. Based on the foregoing chronology, plaintiff  
 12 MATTHEW ANDERSON, Jr. questions the propriety, legitimacy and legality of  
 13 the foregoing "substitution of trustee," especially in light of the allegations herein  
 14 below to buttress the same.  
 15

16 43. Plaintiff MATTHEW ANDERSON, Jr. further is informed, believes and  
 17 thereon alleges that the documented attached hereto and incorporated by this  
 18 reference as bate stamped no. 6343 entitled Declaration of Wachovia Mortgage,  
 19 FSB purporting to comply with Cal. Civ. Code 2923.5, which is clearly filled out  
 20 and signed by two different people and contains "**NO NAME**" OF THE  
 21 PURPORTED "**ASSISTANT VICE PRESIDENT**" of WACHOVIA that was  
 22  
 23  
 24  
 25  
 26  
 27  
 28

1 bought out seven months earlier by WELLS FARGO and whose stock symbol  
 2 was retired in December of 2008; not to mention the glaring difference in the pen  
 3 thickness of the pens between the two show the different hands that executing the  
 4 pen markings thereon.

6 44. Plaintiff MATTHEW ANDERSON, Jr. is informed, believes and thereon  
 7 alleges that his handwriting expert witness will testify to a reasonable degree  
 8 expert certainty that the pens are different and the signatures are NOT from the  
 9 same hand to show that the Assistant Vice President, who he or she purported  
 10 themselves to be at that time, had no clue what minion Lluvia Sanchez  
 11 purportedly did or did not do, to seemingly comply with a Declaration from a  
 12 non-existent entity. Ergo, proffer and adduce evidence for this Honorable Court  
 13 to see for itself the phenomena known as “robo-signing.” Attached **EXHIBIT**  
 14 **12,** bate stamped document “6343.”

15 45. Plaintiff MATTHEW ANDERSON, Jr. is informed, believes and thereon  
 16 alleges that the entity entitled NDEX, LLC the purported post hoc substituted  
 17 trustee of plaintiff’s non-traceable loan/note lodged herein as **EXHIBIT 2** and  
 18 incorporated by this reference is a ruse and/or artifice that was used to  
 19 defraud not only Plaintiff herein, *but all of those persons similarly situated who*  
 20 *were harmed by their actions in a like or substantially identical manner.*  
 21 Attached hereto as **EXHIBIT 13,** is a true and correct copy of their web page  
 22  
 23

1 presence, which is nothing but a one “splash” page presence with no links or  
 2 anything; not to mention that the phone number listed is now that of a prominent  
 3 Texas law firm that handles real property and foreclosure cases; namely Barrett,  
 4 Daffin, Frappier, Turner & Engel, LLP (972)386-5040, and which curiously has  
 5 the EXACT SAME ADDRESS!  
 6

7 46. Plaintiff MATTHEW ANDERSON, Jr. further is informed, believes and  
 8 thereon alleges that there is no distinction between the two entities thereby  
 9 perpetuating the fraud alleged herein above. Attached hereto as EXHIBIT 14,  
 10 is a true and correct copy of Rebecca Frank’s LinkedIn Profile detailing the above  
 11 law firm “and” National Default Exchange as joint employers. Attached hereto  
 12 as EXHIBIT 15, is a true and correct copy of Rebecca Frank’s e-mail to the  
 13 undersigned in response to my query if she worked 20 years for “**the firm or**  
 14 **NDeX?**”- She stating verbatim, “*I WORKED FOR THE FIRM AND NDeX FOR*  
 15 *A TOTAL OF TWENTY YEARS. I STARTED WITH THE FIRM AND WHEN WE*  
 16 *CREATED NDeX UNDER THE FIRM UMBRELLA, I BECAME AN NDeX*  
 17 *employee. IT’S ALL ONE AND THE SAME COMPANY.*” dated July 29, 2013  
 18 at 11:23 a.m.  
 19

20 47. Plaintiff MATTHEW ANDERSON, Jr. equally is informed, believes and  
 21 thereon alleges that said entity and law firm are inextricably entwined with the  
 22 “fallout” known as the “Great Recession” in so far as NDex is an arm of a  
 23  
 24

1 Publicly Traded “Media Company” known as the The Dolan Company with a  
 2 ticker of DM. Attached hereto as EXHIBIT 16, is a true and correct copy of  
 3 Dolan’s Press Release dated curiously July 9, 2013 that it had sold its NDeX  
 4 asset to none other the law firm of “BARRETT, DAFFIN, FRAPPIER, LEVINE  
 5 & BLOCK, LLP.” Plaintiff MATTHEW ANDERSON, Jr., questions why one  
 6 company that created itself would have to sell itself back to itself processing and  
 7 being paid for millions and millions of foreclosure defaults and trustee sales  
 8 throughout the continental United States via a publicly traded media company?

11  
 12 48. Plaintiff is further informed, believes and thereon alleges that the foregoing  
 13 “set up” was (1) use the Media Company as a means to “control the information  
 14 about foreclosures to the public,” (2) to use a law firm skilled in the area of real  
 15 estate to oversee that the purported legal requirements are met through the  
 16 foreclosure processes, and/or to (3) use the indicia of “companies” to give first  
 17 blush legitimacy to the public that everything is, well, *copacetic* when in reality it  
 18 was not. Thus, plaintiff further alleges on information and believes that the  
 19 allegations hereto made provide the good faith basis reasonable and necessary to  
 20 prove and/or tend to prove, to borrow the Bard: “***Something is rotten in the state***  
 21 ***of Denmark.***” Shakespeare's Hamlet, 1603.

22  
 23 49. Plaintiff MATTHEW ANDERSON, Jr. is duly informed, believes and  
 24 thereon alleges that defendants KIMBALL, TIREY & ST. JOHN, LLP and its  
 25  
 26  
 27

1 associate CHRISTINE RELPH, ESQ. had an affirmative duty to investigate,  
 2 verify and secure such information and documentation that a reasonably prudent  
 3 law firm and associate attorney with represented “expertise” in the area of real  
 4 estate, foreclosure, post foreclosure evictions, ad nauseam, to confirm with  
 5 reasonable certainty that WELLS FARGO was in fact a “person” entitled to  
 6 enforce the note initially taken out by plaintiff such that it had “standing” to  
 7 foreclose on plaintiff and to hire said experienced firm and its attorneys to evict  
 8 the hapless victims, plaintiff herein included.  
 9

10 50. Plaintiff further is informed, believes and thereon alleges that defendants’  
 11 failure(s), and each of them, constitutes a violation not only of the law espoused  
 12 hereinabove under section: **LEGAL FOUNDATION** (A, B, C and D) but also  
 13 more specifically the provision of the FAIR DEBT COLLECTION PRACTICES  
 14 ACT which prohibits a debt collector (defendants’ herein) from making  
 15 representations that the debt has been sold to “an innocent purchaser for value.”  
 16 See FDCPA, 15 U.S.C. §§ 1692k et seq., and its progeny. For anyone who  
 17 practices in this area and doesn’t know or is not familiar with the same is fooling  
 18 no one, except perhaps the Honorable Courts in which we are sworn not to  
 19 mislead or commit a fraud upon. ***Cal.Rul.Pro.Conduct 5-200(B).***

20 51. Plaintiff is informed, believes and thereon alleges that the Complaint filed  
 21 by defendants and their associate, Mdme. RELPH as the one prosecuting it,  
 22

1 against plaintiff MATTHEW ANDERSON, Jr. and all others similarly situated  
2 constitutes a fraud or deceptive debt collection practice in violation of the  
3 FDCPA and case law interpreting the same and one that is done routinely through  
4 the Courts of California such that it shows a wanton and reckless disregard for  
5 the legal rights of not only plaintiff MATTHEW ANDERSON, Jr. but all of  
6 those similarly situated with him that have a parity of damages and legal  
7 consequences that form an integral part of the request for class certification  
8 herein plead. Attached hereto as **EXHIBIT 17** is a true and correct copy of the  
9 COMPLAINT FOR UNLAWFUL DETAINER, 3 DAY NOTICE TO PAY OR  
10 QUIT, etc. entitled Superior Court Case No. 37-2012-00030346- CL-UD-SC.  
11 Plaintiff MATTHEW ANDERSON, Jr. also requests this Honorable Court take  
12 judicial notice of all proceedings thereafter conducted by defendants, and each  
13 of them, as additional acts perpetrated on plaintiff and all those similarly situated  
14 in a continuous, routine and wanton and reckless pattern of deceptive practices in  
15 ALL cases where said defendants and each of them failed to confirm in  
16 accordance with the law of In Re Veal governing what an entity must show in  
17 order to qualify to enforce a note for purposes of effectuating a foreclosure on an  
18 individual thereby entitling it to all of the legal rights and procedures consequent  
19 to the same.

20  
21 52. Plaintiff MATTHEW ANDERSON, Jr. is informed, believes and thereon  
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1 alleges that such deceptive debt collection practices in violation of the laws  
2 governing the same permeate a substantial amount of the foreclosures and post-  
3 foreclosure evictions that have been filed by defendants, and each of them, and  
4 those that continue to be filed as we speak.

6 **VII.**  
7

8 **FIRST CAUSE OF ACTION OF**

9 **PLAINTIFF, MATTHEW ANDERSON Jr., AGAINST DEFENDANTS**

10 **KIMBALL, TIREY & ST. JOHN, LLP, CHRISTINE RELPH, Esq., and**

11 **DOES 1 through 100, Inclusive in Violation of the**

12 **FDCPA, 15 U.S.C. § 1692**

13 53. Plaintiffs hereby incorporate the preceding paragraphs by reference as  
14 though fully set forth herein;

15 54. Except for the Defendant debt collectors named in this cause of action  
16 above, Defendants have concealed the roles of the parties and Plaintiff is unsure  
17 who the other "debt collectors" of the loan are.

18 55. Federal law, the FDCPA prohibits the use of "any false, deceptive or  
19 misleading representation or means in connection with the collection of any  
20 debt..."

21 56. In making misrepresentations to the court to aid and abet their clients in  
22 foreclosing on Plaintiff's home, the Defendants made false, deceptive and  
23

1 misleading representation concerning their standing to sue the plaintiffs and their  
2 interest in the debt;  
3

4 57. The Defendants falsely represented the status of the debt, in particular,  
5 that it was due and owing to defendants at the time suit was filed;

6 58. The Defendants falsely represented or implied that the debt was owing  
7 to defendants as an innocent purchaser for value, when in fact, such assignment  
8 had not been accomplished;

9 59. The Defendants threatened to take action, namely engaging in collection  
10 activities and collection and foreclosure proceedings as trustees that cannot legally  
11 be taken by them. And Securitizers discovered that the assignments and proper  
12 documents to collect the Subject Loans could not actually be located. To solve the  
13 problem of missing assignments, and other documents, new assignments were  
14 made and recorded. Most of these Assignments, including those allegedly  
15 affecting the notes and mortgage for Plaintiff's residence, contained false  
16 statements. The Assignments were prepared by specially selected law firms and  
17 companies that specialized in providing "mortgage default services" to banks and  
18 mortgage companies and which is the subject of many pending criminal  
19 investigations. It is now well established that law firms, including Defendants also  
20 "robo-signed" by, inter alia, signing the verifications required in Unlawful  
21 Detainer actions and other court documents.

60. Assignments were prepared to conceal that no valid or proper assignments of the promissory notes or trust deeds ever occurred.

61. The foregoing acts and omissions of Defendants constitute violations of the FDCPA, including, but not limited to, 1692c, 1692d, 1692e, 1692f, 1692g, and 1692i.

62. As an actual and proximate result of defendants' and each of their conduct, Plaintiff MATTHEW ANDERSON, Jr. and all those similarly situated with him are entitled to recover equitable relief, statutory damages, actual damages, reasonable attorney's fees, costs and any and all such other damages available under the law and/or which this Honorable Court deems just and proper.

VIII.

## **SECOND CAUSE OF ACTION OF**

**PLAINTIFF, MATTHEW ANDERSON Jr., AGAINST DEFENDANTS**  
**KIMBALL, TIREY & ST. JOHN, LLP, CHRISTINE RELPH, Esq., and**  
**DOES 1 through 100, Inclusive in VIOLATION OF CALIFORNIA**  
**ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**  
**(“Rosenthal Act”) California Civil Code § 1788, et seq.**

63. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained in the above paragraphs of the Complaint herein as though set forth in full.

1           64. Attorney “Debt collectors” named in this cause of action are subject to  
 2 the Rosenthal Act.  
 3

4           65. Defendants’ actions constitute a violation of California Civil Code §  
 5 1788 et seq., also known as the Rosenthal Act, in that they threatened to take  
 6 actions prohibited by law, including, without limitation: falsely stating the  
 7 amount of a debt; increasing the amount of a debt by including amounts not  
 8 permitted by law or contract; improperly foreclosing upon the Subject Residence;  
 9 and using unfair and unconscionable means in an attempt to collect a debt.  
 10

11           66. Defendants’ misconduct has caused Plaintiff to suffer actual damages.

12           67. As a result of Defendants’ misconduct, Plaintiff is entitled to actual

13 damages and statutory damages in an amount to be determined at trial.  
 14 Moreover, said Defendants’ misconduct was willful, malicious, and outrageous,  
 15 and therefore punitive damages are warranted and demanded. These remedies  
 16 under the Rosenthal Act are cumulative under Gonzalez v. Arrow Financial  
 17 Services, LLC, — F.3d —, 2011 WL 4430844 (9th Cir Sept. 23, 2011).

18           68. Pursuant to the controlling contractual document(s) and applicable law,  
 19 Plaintiff is entitled to recover costs and reasonable attorneys’ fees.  
 20

21 >>  
 22 >>  
 23 >>  
 24

IX.

### **THIRD CAUSE OF ACTION OF**

**PLAINTIFF, MATTHEW ANDERSON Jr., AGAINST DEFENDANTS**

KIMBALL, TIREY & ST. JOHN, LLP, CHRISTINE RELPH, Esq., and

**DOES 1 through 100, Inclusive in VIOLATIONS OF**

**CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200**

69. Plaintiff re-alleges and incorporates herein by reference each and every allegation contained above of the Complaint as though set forth in full.

70. Defendants committed unlawful, unfair and/or fraudulent business practices, as defined by California Business & Professions Code § 17200, by engaging in unlawful, unfair and fraudulent business practices as alleged herein.

71. As a result of Defendants' misconduct, Plaintiff has suffered various damages and injuries according to proof at trial.

72. Plaintiff seeks injunctive relief enjoining Defendants from engaging in unfair business practices described herein.

73. Plaintiff further seeks restitution, disgorgement of sums wrongfully obtained, costs of suit, reasonable attorneys' fees, and such other and further relief as the Court may deem just and proper.

1

1

x

#### **FOURTH CAUSE OF ACTION OF**

**PLAINTIFF, MATTHEW ANDERSON Jr., AGAINST DEFENDANTS**  
**KIMBALL, TIREY & ST. JOHN, LLP, CHRISTINE RELPH, Esq., and**

## **DOES 1 through 100, Inclusive VIOLATIONS OF**

## **MISREPRESENTATION & FRAUD for PUNITIVE DAMAGES**

74. Defendants represented to Plaintiff and the courts that important facts were true.

75. The facts were not true and Defendants had no reasonable basis for claiming they were true at the time they made them.

76. Defendants intended that Plaintiff rely on the facts.

77. Plaintiff reasonably relied on the facts until discovering they were false.

78. Plaintiff was damaged.

XI.

**DEMAND FOR JURY TRIAL**

79. Plaintiff demands a trial by jury pursuant to his constitutional right under the 7<sup>th</sup> Amendment to the United States Constitution.

2

1

XII.

## PRAYER

WHEREFORE, Plaintiff prays for judgment and order against Defendants, inclusive, as follows:

1. Declaratory judgment that defendants' conduct violated the FDCPA and an injunction prohibiting such acts in the future;
  2. An award of compensatory damages;
  3. An award of pre-judgment and post-judgment interest;
  4. Awarding Plaintiff his costs and expenses in this litigation, including reasonable attorneys' fees and expenses pursuant to FDCPA 15 U.S.C. §§ 1692k;
  5. An order awarding Plaintiff and the Class damages and other compensatory relief as the Court deems proper in the maximum amount allowed by law; including but not limited to actual damages, statutory damages pursuant to 15 U.S.C. § 1692k, and disgorgement, and injunctive relief under California's common and statutory law of unfair business practices
  6. Any other further legal and/or equitable relief to which Plaintiff might be entitled at law or which the Court deems proper, according to proof,

7. Exemplary or punitive damages as may be necessary and appropriate to punish and deter any reprehensible or intentional misconduct.

Venerably submitted,

# **LEGAL BALLER<sup>SM</sup> LAW PARTNERS, RLLP**

By: Raymundo Pacello, Jr., Esq.

Attorney for Plaintiff, MATTHEW ANDERSON, Jr.

Email: lb@legalballer.com